IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.12.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.25685 of 2004

T.Prabakar ... Petitioner

Vs.

1) Inspector General of Police (Central Sector),
CRPF,
Lucknow
2) The Commandant,
148 Battalion, CRPF,
GC Campus,
Allahabad. ... Respondents

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari as stated therein.

For petitioner : M/s.G.Bala & Daisy
For respondents : Mr.C.Thirumaran ACGSC

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorari to call for the records pertaining to the impugned order of termination passed by the second respondent in his proceedings Office Order No.D-II-2/3-EC-II-148, dated 16.01.2004, and confirmed by the first respondent in his proceedings, L.No.R-13-2/2004-CS/ADM-3, dated 07.05.2004, and quash the same.

2.Heard the learned counsel for the petitioner as well as for the respondents.

3.The brief facts of the case, as stated by the petitioner, are as follows:-

The petitioner had joined the Central Reserve Police Force as a Police Constable (general duty) on 14.02.2003. By an order of the second respondent, dated 16.01.2004, the petitioner was terminated from service by invoking the Central Civil Services (temporary service) Rules, 1965. No reasons were stated in the impugned order

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of termination. Further, no opportunity had been given to the petitioner to explain his position. The petitioner had preferred an appeal to the first respondent challenging the termination order, dated 16.01.2004, passed by the second respondent. On 07.05.2004, the first respondent had rejected the petitioner's appeal stating as follows:-

> " i) The Const.Rectt. is not Force as per C.R.P.F. Act and Rules-1955. Apendix-H,Note-2 as mentioned I Para-1 of C.R.P.F. Rules the Constable was terminated from service giving one month notice without any reason. This is correct as per the existing rules.
>
> ii) In this case, there is no provisions to explain the reasons for termination from service. Appeal petition is filed by the above Constable is also rejected by court on 22.10.03 and Character and Antecedents verification certificate is signed by District Magistrate on 30.10.2003. This is not correct. Character and Antecedents form is duly filled by the individual on June 2003. During the filling up of Character and Antecedents form the individual is not mentioned about the case is under investigation (pending) against him. This matter is also not informed to the Department. Hence, point raised by Constable is not correct."

From the order passed by the first respondent on 07.05.2004, it is clear that the petitioner's service had been terminated for the reason that the petitioner had been involved in a criminal case. The fact that the petitioner had been acquitted by the competent court of law has not been considered by the respondents. The issue in the criminal case was that he had involved himself in a wordy quarrel with his neighbour. There was no allegation of moral turpitude against the petitioner. The respondents ought to have proceeded against the petitioner only as per the CRPF Act,1949, and CRPF Rules, 1955.

4.In the counter affidavit filed on behalf of the respondents, it is stated as follows :-

> "The petitioner was enlisted as CT/GD(Force No.031481535) in CRPF with effect from 15.02.2003. The verification roll (CRPF Form No.25) filed by the petitioner was sent to the District Collector, Thiruvallur, for verification of his character and antecedents vide GC CRPF Allahabad Ltr.No.V.I-1/03-EC-6 (V/R), dated 26.06.2003. The District Collector vide his letter No.27891/2003-M-4, dated 22.10.2003, had intimated that as per letter No.C.No.H4/2003/49851/2003, dated 09.10.2003, of Superintendent of Police, Chengai East District, St.Thomas

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Malai, Chennai -16 (T.N), F-1, Avadi Police Station reported that individual was arrested in F-1, Avadi Police Station in Crime No.378/2002 under Section 294(B),323 IPC on 27.09.2002 and subsequently, set free on bail. Further, he has stated that a charge sheet had been filed in Judicial Court, Poonamallee, and pending for trial. Therefore, the petitioner is not a fit person for Government Employment. It was further stated that the above said report was received through GC Allahabad vide letter No.V.I-1/04-EC-6(V/R), dated 08.01.2004, with direction to take further necessary action against the petitioner. Accordingly, his case was examined in 148 Bn and it was considered that the petitioner was not fit for Government Employment and he was issued one month notice for termination from service under the provision of Sub Rule (I) of Rule 5 of CCS (T/S) Rules 1965, read with rule 16 and note below appendix F to CRPF Rules, 1955, vide office order No.D.II-2/03-EC-II, dated 16.01.2004, as the petitioner had suppressed the facts of the criminal case registered against him by not disclosing about the case in verification roll column No.(A) & (B) at para 12, thus the petitioner committed an act of misconduct in his capacity as a member of the disciplined force. "

Therefore, the second respondent had passed the order, dated 16.01.2004, and confirmed by the first respondent by his proceedings, dated 07.05.2004.

5.The learned counsel appearing for the petitioner had relied on the following cases to support his contentions :-

5.1. In the case of Pawan Kumar Vs. State of Haryana and another, reported in AIR 1996 Supreme Court 3300, the Supreme Court has held that "moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. It has also been held by the Supreme Court as follows :-

"14. Before concluding this judgment we hereby draw attention of the Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams. Life is too

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precious to be staked over a petty incident like this. Immediate remedial measures are, therefore, necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine upto a certain limit, say upto Rs. 2000 or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever."

5.2. In the case of Commissioner of Police, Delhi and Another Vs. Dhaval Singh, reported in (1999) 1 Supreme Court Cases 246, it has been held as follows:-

"5. That there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it, on 15-11-1995, to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20-11-1995 shows that the information conveyed by the respondent on 15-11-1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an in advertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the in advertent mistake committed by him after he had been acquitted by the trial Court - it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15-11-1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and with out taking into consideration all relevant material. The tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above."

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5.3. A Division Bench of this Court in the State of Tamil Nadu and others Vs. G.Sathish Kumar and another in W.P.Nos.2265 and 2266 of 2002, has held as follows :-

> "7. It is not in dispute that by applying the conclusion arrived at in the above referred case, the impugned orders of the Tribunal cannot be faulted with. We have already referred to the fact that both the applicants/first respondent in the above writ petitions satisfied and fulfilled all the required conditions/qualifications, but there was one defect, viz., omission to fill in clause No.15 of the application. As observed by the Supreme Court, the said defect is curable and in view of the fact that information was furnished by the applicants voluntarily, the appointing authority ought to have considered the same and appointed them as claimed.
>
> 8.We are in entire agreement with the conclusion arrived at by the Tribunal and we do not find any merit in the above Writ Petitions. Accordingly, both the Writ Petitions fail and the same are dismissed. No costs. In view of the dismissal of the Writ Petitions, the petitioners herein are directed to implement the orders of the Tribunal within a period of four weeks from the date of receipt of copy of this order."

5.4. Another Division Bench of this Court in the case of P.Virabhagu Vs. The Union of India, in W.P.No.16043 of 2000, has held as follows :-

> "35. We are of the view that the main object and intention of the Government for seeking report of the Police authorities concerned with regard to character and antecedent of the individuals while recruiting them for Government Service is to prevent the anti-social elements, hard core criminals, habitual offenders, and anti-State elements from entering into the Government Service. .....
>
> 42. Following the principles laid down in the above said decision, [Pawan Kumar Vs. State of Haryana and another 1996 (4) SCC 17)] we are of the view that since the offence committed by the petitioner is a petty one, it cannot stand in the way of getting a job, which would decide the fate of the individual, while the petitioner is otherwise eligible to the said post and got selected."

5.5. A learned single Judge of this Court in the case of K.Ezhilrani Vs.The Director General of Police, in W.P.No.9480 of 2006,has held as follows :-

> "3. The issue as to whether the employment could be denied on the ground of suppression of fact, came up

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for consideration before a Division Bench of this Court in "The Director General of Police and the Chairman Uniformed Services Recruitment Board, Chennai & 2 others Vs. C.Senthilkumar and The Registrar, Tamil Nadu Administrative Tribunal, Chennai (MANU/TN/2025/2005)". In that case, the first respondent therein was selected for the post of Grade II Police Constable, but he suppressed the fact that he was convicted for an offence punishable under Section 75 of the Madras City Police Act. On that ground he was denied appointment. Considering the grievance, the Division Bench, after referring to the various decisions of the Supreme Court, finally held that for suppression of facts the employment cannot be denied. Applying the said judgment to the facts of this case, I am of the considered view that the petitioner is entitled to succeed in the writ petition. Further, it is to be seen in this case that out of the two criminal cases registered against the petitioner, the petitioner was not aware of the registration of the first case at all and the subsequent dismissal on the ground that the charge sheet was not filed in time. The other remaining case has ended in acquittal of the petitioner. In view of the fact that the criminal case ended in acquittal, the petitioner did not disclose the same in the application form. The said non-disclosure shall not disentitle the petitioner to the appointment, which is her livelihood."

5.6. Another learned Single Judge of this Court in the case of K. Palanikumar Vs. The Director General of Police, Chennai, and others, in W.P.No.19030 of 2005, while holding that non-disclosure regarding the candidate's involvement in a criminal case would not justify the dismissal order passed against the candidate who had been selected for the post of Police Constable, had relied on the following cases before coming to the said conclusion. The case laws are as follows :-

"Kanakaraj.K v. Inspector General of Police (I&O), Madras and 2 others. W.P. No. 27627 of 2005
Nagarajan.M v. The Registrar, High Court and Another 2004 (3) LW 32;
Srinivasan v. Government of Tamil Nadu 1983 (2) MLJ 513;
The Secretary to Government, Home Department and others v. P. Ravichandran and Another MANU/TN/1706/2005;"

5.7.A learned Single Judge of this Court in B.Stalin Vs. Director General of Police, Chennai and others in W.P.No.9086 of 2005, has also held that the denial of appointment on the sole ground of non-disclosure of such conviction is not justified. The

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learned Single Judge has relied on the following case laws:-

"DGP v. C.Senthilkumar, MANU/TN/2025/2005
T.S.Vasudevan Nair Vs. Director of V.S.S.C., 1988 S.C.C. (Supp.) 795
Commissioner of Police Vs. Dhaval Singh
A.I.R.1999 S.C.2326
Regional Manager, Bank of Baroda v. Presiding Officer, Central Government Industrial Tribunal, A.I.R.1999 S.C.912
(1999) 2 S.C.C. 247"

6.In the present case, it is seen that the impugned order of termination against the petitioner , dated 16.01.2004, passed by the second respondent, is a non-speaking order, as no reasons have been given for passing the said order. Further, the first respondent by his order, dated 07.05.2004, had confirmed the order of termination passed against the petitioner without showing sufficient reasons for confirming the said order of dismissal. Both the impugned orders do not show that the petitioner was given sufficient opportunity to defend himself, in view of the fact that a criminal case is said to have been filed against the petitioner.

7.It has been further stated by the learned counsel appearing for the petitioner that a case had been foisted against the petitioner for a wordy quarrel with the neighbour and that the trial Court had acquitted the petitioner, on 22.10.2003, holding that the prosecution had not proved the charge.

8. In such circumstances, this Court does not find sufficient reasons to sustain the impugned orders challenged by way of this writ petition. Therefore, the writ petition is allowed and the respondents are directed to reinstate the petitioner, with continuity of service and all other attendant benefits, without backwages for the period the petitioner was actually out of service. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

To

1. The Inspector General of Police (Central Sector),
CRPF, Lucknow

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2. The Commandant,
148 Battalion, CRPF,
GC Campus,
Allahabad.

1 cc to M/s. G. Bala & Daisy, Advocate, Sr. 64063

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MJ (CO)
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